

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 6—Permits

ORDER OF RULEMAKING

By the authority vested in the Clean Water Commission, Section 644.026, RSMo. Supp. 2011, the Clean Water Commission adopts a rule as follows:

10 CSR 20-6.100 General Pretreatment Regulation is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 1, 2012 (37 MoReg 394-406). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rescission was held May 2, 2012, and the public comment period ended May 16, 2012. At the public hearing, the Clean Water Commission staff explained the new proposed rule. No comments were made at the public hearing.

Five (5) written comments were received from Mr. Douglas M. Mendoza, P.E. with the Metropolitan St. Louis Sewer District (MSD). Three (3) comments were received from Ms. Dorris L. Bender with the City of Independence's Water Pollution Control Department (Independence). Two (2) comments were received from Mr. Randy Lyman with the City of Springfield's Clean Water Services (Springfield). Four (4) changes to the proposed new rule were made as a result of these comments. Department of Natural Resources staff provided three (3) additional comments on this Order of Rulemaking.

COMMENT #1: MSD, Independence, and Springfield support the adoption of the federal pretreatment streamlining regulations. The federal regulations provide flexibility to administer the regulations and more effectively manage their workload.

RESPONSE: The Department of Natural Resources (Department) appreciates and acknowledges the support. No changes in the proposed revisions were made in response to these comments.

COMMENT #2: MSD commented that Subsection (2)(B) of the rule omitted three parts in the federal rules, 40 CFR Parts 405 through 471, which contain pretreatment standards and should be added to the list in Subsection (2)(B).

RESPONSE AND EXPLANATION OF CHANGE: Staff agrees the parts in the federal rule should be added to this proposed rule. One additional part was identified by Department staff. The federal rules, 40 CFR Parts 435, 437, 442, and 444, will be added to Subsection (2)(B) of the proposed rule.

COMMENT #3: MSD and Independence commented that the federal rule, 40 CFR Part 136, is updated more frequently than the state rule, 10 CSR 20-7.015(9)(A) and requested that the federal rule be cited as the reference for approved sampling and analytical methods.

RESPONSE AND EXPLANATION OF CHANGE: Staff agrees the reference to the federal rule should be retained in this proposed rule. Both the federal and state citations will be used in order to allow flexibility to use methods published in either one of the two regulations. The proposed rule will add a citation to the state rule [10 CSR 20-7.015(9)(A)2] instead of substituting for the federal rule.

COMMENT #4: MSD, Independence, and Springfield commented that it is not appropriate to require notification of Missouri's solid and hazardous waste laws retroactively for all industrial users that have been previously notified of federal hazardous and solid waste laws. The fiscal note for the proposed rule does not address costs for the new notification requirements. In addition, the federal requirement to notify industrial users would still apply and the proposed rule does not include the reference to the federal requirement.

RESPONSE AND EXPLANATION OF CHANGE: Staff acknowledges that this is an additional burden on the cities that was not considered in the fiscal note. Paragraph (10) will be deleted from the proposed rule. This deletion does not remove the responsibility of the industrial users to comply with Missouri law. Staff encourages the cities to notify industries that Missouri's solid and hazardous waste rules are applicable for materials that are solid waste. Guidance on notification procedures is available in *RCRA Information on Hazardous Wastes for Publicly Owned Treatment Works*, Environmental Protection Agency, September 1985. This guidance is available at: <http://www.epa.gov/npdes/pubs/owm0002.pdf>.

COMMENT #5: MSD commented that paragraph (12)(B) of the proposed rule is confusing because it is not different from what is in the federal rule, 40 CFR Section 403.14(b).

RESPONSE AND EXPLANATION OF CHANGE: Staff agrees with the comment and the language of paragraph (12)(B) in the proposed rule is removed.

COMMENT #6: Department staff commented that the phrase "not including any later amendments or additions" is added to the citations for rules that are adopted by reference in paragraph (2). Also, the words "subject to the additions, modifications and substitutions set forth in 10 CSR 20-6.100 (4) through (13)" should be add the first sentence of paragraph (2)(B).

RESPONSE AND EXPLANATION OF CHANGE: The phrasing included in paragraph (1) of the proposed rule meets the requirements of section 536.031 RSMo for an adoption of a rule by reference. The phrase will be repeated in paragraph (2) for clarity. Also, the suggested wording "subject to . . ." was added to paragraph (2)(B).

COMMENT #7: Department staff commented that the title of the Missouri Revised Statute and section numbers cited in paragraph (12)(A) of the proposed rule should be taken out of the rule language.

RESPONSE AND EXPLANATION OF CHANGE: The title of the Missouri Revised Statute and the section numbers were removed from paragraph (12)(A).

COMMENT #8: Department staff commented that the title of the Missouri Revised Statute cited in paragraph (14) of the proposed rule should be taken out of the rule language.

RESPONSE AND EXPLANATION OF CHANGE: The title of the Missouri Revised Statute was removed from paragraph (14).

10 CSR 20-6.100 General Pretreatment Regulation

(2) Provisions Incorporated.

(A) The provisions of the *General Pretreatment Regulations for Existing and New Sources of Pollution*, 40 CFR Part 403, as in effect January 1, 2011, are hereby adopted and incorporated by reference, not including any later amendments or additions, subject to the additions, modifications, and substitutions set forth in 10 CSR 20-6.100 (4) through (13).

(B) The provisions of the following rules, as in effect January 1, 2011, are hereby adopted and incorporated by reference, not including any later amendments or additions, subject to the additions, modifications, or substitutions set forth in 10 CSR 20-6.100 (4) through (13). The rules in this list refer to only the rules that contain pretreatment standards or limitations for industrial facilities that discharge to the local publicly owned treatment works.

40 CFR Part 406 Grain Mills Point Source Category

40 CFR Part 413 Electroplating Point Source Category

40 CFR Part 414 Organic Chemicals, Plastics, and Synthetic Fibers

40 CFR Part 415 Inorganic Chemicals Manufacturing Point Source Category

40 CFR Part 417 Soap and Detergent Manufacturing Point Source Category

40 CFR Part 418 Fertilizer Manufacturing Point Source Category

40 CFR Part 419 Petroleum Refining Point Source Category

40 CFR Part 420 Iron and Steel Manufacturing Point Source Category

40 CFR Part 421 Nonferrous Metals Manufacturing Point Source Category

40 CFR Part 423 Steam Electric Power Generating Point Source Category

40 CFR Part 425 Leather Tanning and Finishing Point Source Category

40 CFR Part 426 Glass Manufacturing Point Source Category

40 CFR Part 428 Rubber Manufacturing Point Source Category

40 CFR Part 429 Timber Products Processing Point Source Category

40 CFR Part 430 Pulp, Paper, and Paperboard Point Source Category

40 CFR Part 433 Metal Finishing Point Source Category

40 CFR Part 435 Oil and Gas Extraction Point Source Category

40 CFR Part 437 Centralized Waste Treatment Point Source Category

40 CFR Part 439 Pharmaceutical Manufacturing Point Source Category

40 CFR Part 442 Transportation Equipment Cleaning Point Source Category

40 CFR Part 443 Effluent Limitations Guidelines for Existing Sources and Standards of Performance and Pretreatment Standards for New Sources for the Paving and Roofing Materials (Tars and Asphalt) Point Source Category

40 CFR Part 444 Waste Combustors Point Source Category

40 CFR Part 446 Paint Formulating Point Source Category

40 CFR Part 447 Ink Formulating Point Source Category

40 CFR Part 455 Pesticide Chemicals

40 CFR Part 458 Carbon Black Manufacturing Point Source Category

40 CFR Part 461 Battery Manufacturing Point Source Category

40 CFR Part 464 Metal Molding and Casting Point Source Category

40 CFR Part 465 Coil Coating Point Source Category

40 CFR Part 466 Porcelain Enameling Point Source Category

40 CFR Part 467 Aluminum Forming Point Source Category

40 CFR Part 468 Copper Forming Point Source Category
40 CFR Part 469 Electrical and Electronic Components Point Source Category
40 CFR Part 471 Nonferrous Metals Forming and Metal Powders Point Source Category

Note: 40 CFR Part 412 Concentrated Animal Feeding Operations (CAFO) Point Source Category has been adopted at 10 CSR 20-6.300(4)(C).

(5) In the provisions of 40 CFR Part 403, following all occurrences of the citation to 40 CFR Part 136, add the phrase “or 10 CSR 20-7.015(9)(A)2.”

(10) Substitute “Missouri Department of Natural Resources” for the term “agency” in the 40 CFR section 403.16.

(11) Confidentiality.

(A) In lieu of 40 CFR Section 403.14(a), the following shall apply:

1. Authorities. Any claim for confidentiality to the control authority must be in accordance with the Missouri Sunshine Law, Chapter 610 RSMo. If no claim is made at the time of submission, the control authority may make the information available to the public without further notice.

(B) The provisions of 40 CFR section 403.14(c) are omitted.

(12) Pretreatment Authorization. Where the director is also the control authority, the director may issue a pretreatment authorization to a categorical industrial user which discharges industrial process wastewater to a POTW. This authorization will be used to set forth the conditions governing the user’s discharge to the POTW, where the POTW does not have an approved pretreatment program or the POTW has not issued discharge permits that meet the requirements set forth in 10 CSR 20-6.100(2) and (3).

(13) Judicial Relief.

(A) The director shall have authority to seek judicial relief pursuant to Missouri Clean Water Law, Chapter 644, including section 644.076, RSMo for noncompliance by industrial users when the POTW has failed to act or has acted to seek such relief but has sought judicial relief which the director finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief will be governed by applicable state or federal law and not by this provision.

(B) The director shall have authority to seek judicial relief pursuant to the Missouri Clean Water Law, Chapter 644, including section 644.076, RSMo for noncompliance by industrial users where the director is the control authority.